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FIRST GENERAL COUNSEL'S REPORT

CELA

PRE-MUR 575

DATE RECEIVED: July 28, 2014

DATE ACTIVATED: June 18, 2015

EXPIRATION OF SOL: April 8, 2019

SOURCE:

Sua Sponte Submission

RESPONDENT:

Southern Alliance for Clean Energy

RELEVANT STATUTES:

52 U.S.C. § 30104

52 U.S.C. § 30120

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Southern Alliance for Clean Energy ("SACE")¹ filed a *sua sponte* submission with the Federal Election Commission ("Commission") stating that it inadvertently violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by distributing an electioneering communication with an incomplete disclaimer and failing to timely disclose the communication.² The available information shows that there is reason to believe that SACE violated 52 U.S.C. § 30104(f) by failing to file a report with the Commission within 24 hours of making the electioneering communication, and 52 U.S.C. § 30120(a)(3) and (d)(2) because the disclaimer failed to state that the communication was not authorized by any candidate or

¹ SACE is a nonprofit group organized under section 501(c)(3) of the Internal Revenue Code.

² See Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("*Sua Sponte* Policy"); SACE *Sua Sponte* Submission at 1 (Jul. 15, 2014), P-MUR 575 (Southern Alliance for Clean Energy) ("Submission").

1 candidate's committee or that SACE was responsible for its content. We pursued this matter
2 through Fast-Track Resolution³ ("FTR") and have now completed conciliation negotiations with
3 SACE. We recommend that the Commission open a Matter Under Review, accept the attached
4 negotiated Conciliation Agreement, and close the file in this matter.

5 **II. FACTS**

6 From March 24 through April 13, 2014, SACE aired a television advertisement in North
7 Carolina, "Billionaires," which thanked Senator Kay Hagan for her efforts to protect air quality.
8 Senator Hagan was running for re-election during this time period. The advertisement displayed
9 a disclaimer stating that it was "Paid for by the Southern Alliance for Clean Energy" and
10 providing SACE's website.

11 SACE states that it initiated a legal review after receiving a press inquiry about the
12 advertisement, and that the review concluded that the advertisement was an electioneering
13 communication and SACE should have filed a report with the Commission disclosing
14 disbursements related to the advertisement.⁴ SACE asserts that it was unaware of the
15 Commission's rules governing electioneering communications, and notes that it does not
16 participate in political campaigns and had never before made an electioneering communication.⁵

17 On July 25, 2014, SACE filed a report with the Commission disclosing \$369,914.89 in
18 disbursements related to this advertisement. It also amended its policies to mandate that all radio

³ See OGC Memorandum (Dec. 1, 2015), P-MUR 575 (Southern Alliance for Clean Energy).

⁴ Letter from Ezra W. Reese (Aug. 17, 2015).

⁵ SACE has filed no other disclosure reports with the Commission. SACE also notes that the primary election that triggered the reporting requirement was "not competitive," as Hagan won close to 80 percent of the vote, and that the general election in North Carolina was almost six months later. Submission at 2.

and television advertisements referring to federal candidates be reviewed by election law counsel before being broadcast.⁶

III. LEGAL ANALYSIS

A. Reporting Requirements for Electioneering Communications

An electioneering communication is a "broadcast, cable or satellite communication" that:

(1) refers to a clearly identified candidate for federal office; (2) is made within 60 days before a general election or 30 days before a primary election; and (3) is targeted to the relevant electorate.⁷ A candidate is "clearly identified" when the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference.⁸ A communication is "targeted to the relevant electorate" when it can be received by 50,000 or more persons in the state the candidate seeks to represent.⁹

Under 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20, any person who makes aggregate disbursements exceeding \$10,000 for the cost of producing and airing electioneering communications during any calendar year must file a report with the Commission within 24 hours of publicly distributing the communication. This "24-Hour Report" must include the identity of the person making the disbursement, the amount and the identity of the recipient of each disbursement over \$200, and the names and addresses of contributors who give \$1,000 or more in the calendar year to the person making the disbursement.¹⁰

⁶ Submission at 3.

⁷ 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a).

⁸ 11 C.F.R. § 100.29(b)(2).

⁹ 11 C.F.R. § 100.29(b)(5).

¹⁰ 52 U.S.C. § 30104(f).

1 SACE was required to file a 24-Hour Report for "Billionaires" because it was an
2 electioneering communication and the costs exceeded the Act's \$10,000 disclosure threshold.
3 The advertisement clearly identified a federal candidate, Senator Kay Hagan, and aired in North
4 Carolina (the relevant electorate for the Senate race) during the 30-day electioneering
5 communication window for the May 6 primary election.¹¹ Further, SACE calculated the pro-
6 rated cost of running the advertisement during the electioneering communications window as
7 \$369,914.89.¹² SACE was therefore required to file a disclosure report disclosing the
8 \$369,914.89 in costs within 24 hours of April 6, 2014, but did not file its report until July 25,
9 2014. SACE admits that "Billionaires" qualifies as an electioneering communication, and that it
10 failed to timely file the required report.¹³ Accordingly, SACE violated 52 U.S.C. § 30104(f) by
11 failing to timely file an electioneering communication report for the advertisement.

12 **B. Disclaimer Requirements for Electioneering Communications**

13 The Act requires electioneering communications to include disclaimers.¹⁴ The
14 communications, if not authorized by a candidate,¹⁵ must clearly state the name and permanent
15 street address, telephone number, or website address of the person who paid for the
16 communication and state that the communication was not authorized by any candidate or
17 candidate's committee.¹⁶ A televised communication that is not authorized by a candidate must

¹¹ The advertisement aired from March 24, 2014 through April 13, 2014 — the corresponding window for "electioneering communications" opened on April 6, 2014, while SACE's advertisement was still on the air.

¹² SACE provided documentation to support its calculation. See Letters from Ezra W. Reese (Aug. 17 and Oct. 14, 2015); E-mail from Ezra W. Reese (Oct. 19, 2015 3:12 PM EST).

¹³ Submission at 2-3.

¹⁴ 52 U.S.C. § 30120(a).

¹⁵ There is no indication that Hagan was involved with, or authorized, SACE's communication.

¹⁶ 52 U.S.C. § 30120(a)(3).

1 also include an oral statement disclosing who is responsible for its content.¹⁷

2 SACE's advertisement displayed a written disclaimer reflecting that it was paid for by
3 SACE and providing the address for SACE's website, but contained no oral disclaimer
4 whatsoever.¹⁸ The advertisement, therefore, lacked the required written statement that it was not
5 authorized by any candidate or candidate's committee, and the required oral statement that
6 SACE was responsible for its content. SACE admits that the disclaimer did not comply with the
7 Act.¹⁹ Accordingly, SACE violated 52 U.S.C. § 30120(a)(3) and (d)(2) by failing to include a
8 complete disclaimer in the advertisement.

17 52 U.S.C. § 30120(d)(2).

18 Submission at 2-3. SACE did not submit a copy of the advertisement, but the advertisement is available online through SACE's YouTube page. See <https://www.youtube.com/watch?v=ydaOF1MFTQ> (last visited Mar. 17, 2016).

19 Submission at 3.

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6 **V. RECOMMENDATIONS**

7 1. Open a Matter Under Review;

8 2. Accept the attached Conciliation Agreement with the Southern Alliance for Clean
9 Energy;

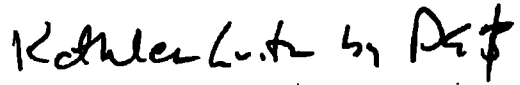
10 3. Approve the appropriate letter; and


4. Close the file.

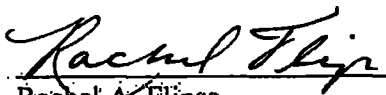
Daniel A. Petalas
Acting General Counsel

Dated: March 17, 2016

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